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No. 09-1445

Supreme Court, U.S.
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In The

Supreme Court of the United States

JOSEFINA C. VILLA,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITIONER'S REPLY TO BRIEF FOR THE UNITED STATES

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Josefina C. Villa respectfully submits this reply to the Solicitor General's Brief for the United States.

I. THIS IS AN IDEALLY SUITED CASE FOR RESOLVING THE CIRCUIT CONFLICT CONCERNING INTERPRETATION OF THE PREFATORY "EXCEPT" CLAUSE OF 18 U.S.C. § 924(c)(1)(A).

At page 11 of the Brief for the United States, the Solicitor General suggests the instant petition ought to be held pending this Court's resolution of *Abbott v. United States*, No. 09-479, and *Gould v. United States*, No. 09-7073. Br. for U.S. 12.

Ms. Villa simply notes that the instant case may be more ideally suited than *Abbott* and *Gould* for resolution of the circuit conflict concerning interpretation of the prefatory "except" clause of 18 U.S.C. § 924(c)(1)(A). Specifically, in the instant case, the sentencing court stated unequivocally that a ten-year sentence would be appropriate in this case, and that it would have ordered Ms. Villa to serve concurrent ten-year and five-year prison terms had it not concluded it was statutorily required to impose those terms consecutively. Pet. App. 44-45, 55. Hence, if this Court resolves the circuit conflict in the manner urged by Ms. Villa and the petitioners in *Abbott* and *Gould*, Ms. Villa's sentence will be reduced by five years.

II. REVIEW ON CERTIORARI IS WARRANTED TO RESOLVE THE CIRCUIT SPLIT AS TO WHETHER SUSPICIONLESS PROLONGATION OF A VEHICLE STOP VIOLATES THE FOURTH AMENDMENT.

At page 11 of the Brief of the United States, the Solicitor General contends review on certiorari is not warranted in this case on the issue of whether suspicionless prolongation of a traffic stop is constitutionally unreasonable. This is so, according to the Solicitor General, because of the purported existence of a "factbound" issue as to whether reasonable suspicion justified prolongation of the traffic stop in this case.

However, the undisputed facts demonstrate the absence of any reasonable suspicion to extend the traffic stop. Hence, no real "factbound" barrier stands in the way of this Court's review of the Fourth Amendment question presented.

The Solicitor General contends Ms. Villa's nervous behavior and suspicious statements, some of which conflicted in minor details with some statements made by her traveling companion, gave the trooper who stopped them reasonable suspicion to prolong the traffic stop so as to wait for another trooper to bring a drug detection dog to the scene. However, before the trooper made the decision to call for the drug detection dog, he told Ms. Villa she was free to leave. Pet. App. 3. A consensual encounter ensued, during the course of which the trooper

gleaned no new information other than that Ms. Villa and her companion were considering the possibility of flying back home shortly after getting to their destination in Minnesota, and that Ms. Villa was unwilling to consent to a search of her vehicle. Pet. App. 4. Information of this nature does not give rise to reasonable suspicion of anything unusual, much less criminal. *United States v. Cortez*, 449 U.S. 411, 417 (1981) (Reasonable suspicion is lacking absent "some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.")

The trooper's declaration that Ms. Villa was free to go reveals that the trooper had no reasonable suspicion to continue detaining Ms. Villa. See *Arizona v. Johnson*, 129 S.Ct. 781, 788 (2009) ("Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave.") No reasonable suspicion developed during the ensuing consensual encounter. Yet, the trooper detained Ms. Villa pending arrival of a drug detection dog. Pet. App. 4.

Accordingly, this case squarely presents the question whether suspicionless prolongation of a traffic stop violates the Fourth Amendment. As noted in Ms. Villa's petition, the circuits are split on this issue. Pet. 19-21. Review on certiorari is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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September 2010